IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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Tuba HASAN; Syed Ammar Yasir ZAIDI

Plaintiffs,

v.

U.S. DEPARTMENT OF STATE; John KERRY, Secretary of State; Michele T. BOND, Assistant Secretary of Consular Affairs, U.S. Department of State; Ed RAMOTOWKSI, Deputy Assistant Secretary for Visa Services, U.S. Department of State; U.S. EMBASSY in ISLAMABAD; Richard OLSON, U.S. Ambassador to Pakistan; Jeh JOHNSON, Secretary, U.S. Department of Homeland Security; and Leon RODRIGUEZ, Director, United States Citizenship & Immigration Services,

CASE NO. 15-CV-1767

***Defendants*.**
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COMPLAINT FOR ISSUANCE OF WRIT OF MANDAMUS

INTRODUCTION

1. This is an action to compel the Defendants and those acting under them to immediately and forthwith take all appropriate action to issue a decision on the Immigrant Visa petition of the Plaintiff Syed Ammar Yasir Zaidi ("Mr. Zaidi"), a native and citizen of Pakistan, which has been pending at the U.S. Embassy located in Islamabad, Pakistan ("the Consulate") since on or before March 21, 2014.

2. The Immigrant Visa petition is based on an approved Petition for Alien Relative (Form I-130) filed on Mr. Zaidi's behalf by his U.S. citizen wife, the Plaintiff Tuba Hasan ("Ms. Hasan"). U.S. Citizenship and Immigration Services ("USCIS") received the I-130 on or

about May 6, 2013 and approved the petition on or about August 28, 2013. Ex. 1. Mr. Zaidi appeared for an Immigrant Visa interview at the Consulate on March 21, 2014. Since that time he and his wife have been told that his case is undergoing "administrative processing." Despite numerous inquiries made by the Plaintiffs since Mr. Zaidi was interviewed over a year ago, the Consulate has thus far refused to issue a decision on Mr. Zaidi's Immigrant Visa petition.

3. The Plaintiffs are entitled to a decision on Mr. Zaidi's Immigrant Visa petition. *See* 22 C.F.R. § 42.81(a) ("Issuance or refusal mandatory. When a visa petition has been properly completed and executed before a consular officer in accordance with the provisions of INA and the implementing regulations, the consular officer must either issue or refuse the visa…."). The Immigrant Visa petition remains within the jurisdiction of the Defendants, who have improperly withheld action on it, to the detriment of the rights and privileges of the Plaintiffs.

JURISDICTION

4. This is a civil action brought pursuant to 8 U.S.C. § 1329 (jurisdiction of the courts), 28 U.S.C. § 1651 (writs) and § 1361 (action to compel an officer of the United States to perform his duty) to compel the Defendants to perform a duty that the Defendants owe to the Plaintiffs. Jurisdiction is also conferred by 5 U.S.C. § 555(b) and § 704, the Administrative Procedure Act ("APA").

5. Under 28 U.S.C. § 1361, "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." The Plaintiffs are challenging the Consulate's authority to refuse to adjudicate Mr. Zaidi's Immigrant Visa

petition, and are not challenging a decision within the discretion of the Consulate. Therefore, mandamus jurisdiction exists. *See Rivas v. Napolitano*, 714 F.3d 1108, 1110 (9th Cir. 2013) ("a court has jurisdiction to review a consular official's actions "when [the] suit challenges the authority of the consul to take or fail to take an action as opposed to a decision within the consul's discretion.'") (*quoting Patel v. Reno*, 134 F.3d 929, 931-32 (9th Cir. 1997)). *See also Raduga USA Corp. v. U.S. Dep't of State*, 440 F. Supp. 2d 1140, 1149 (S.D. Cal. 2005) (finding mandamus jurisdiction where "Plaintiffs simply seek to compel the consul to render a final decision on Plaintiffs' [] visa applications which is mandated under [8 C.F.R] § 42.81(a)").

6. The APA requires the Consulate to carry out its duties within a reasonable time. 5 U.S.C. § 555(b) provides that "[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it." This requirement applies to the Consulate. *See Rivas*, 714 F.3d at 1111 ("[b]ecause the consulate's attention to reconsideration that fall within 22 C.F.R. § 42.81(e) is legally required, that action may be compelled under the APA."); *see also Raduga USA*, 440 F. Supp. 2d at 1146 ("Plaintiffs seek only to compel the consul to make a decision on their visa applications, which the consul is required to make in the first place pursuant to 22 C.F.R. 42.81(a). Accordingly, the Court finds that Plaintiffs have sufficiently demonstrated Article III standing to bring this APA mandamus action.") (internal citation omitted). As set forth below, the delay in processing Mr. Zaidi's Immigrant Visa petition is unreasonable.

7. The Code of Federal Regulations is unambiguous that the Consulate has a mandatory and affirmative duty to adjudicate a properly filed Immigrant Visa petition where the

underlying I-130 petition has been approved by USCIS and forwarded to the appropriate overseas consulate. 22 C.F.R. § 42.81(a).

VENUE

8. Venue is proper under 28. U.S.C. § 1391(e)(1) because this is an action against officers and agencies of the United States in their official capacities, brought in the district where a Plaintiff resides, and no real property is involved.

PARTIES

9. The Plaintiff, TUBA HASAN, is a United States citizen and the Petitioner for an I-130 Petition for Alien Relative filed on behalf of her husband, Mr. Zaidi, which was approved by USCIS on or about August 28, 2013. Ms. Hasan is a legal resident of the Eastern District of New York.

10. The Plaintiff, SYED AMMAR YASIR ZAIDI, a native and citizen of Pakistan, is the beneficiary of an approved I-130 Petition for Alien Relative filed by his U.S. citizen wife, Ms. Hasan, and is an applicant for an Immigrant Visa currently pending at the U.S. Embassy – Islamabad, Pakistan.

11. The Defendant UNITED STATES DEPARTMENT OF STATE is an agency of the United States government involved in the acts challenged, and employs the officers named as Defendants in this Complaint.

12. The Defendant, JOHN KERRY, is the Secretary of State of the United States. This suit is brought against Secretary Kerry in his official capacity, as he is charged with the administration and the enforcement of immigration and nationality laws relating to the powers, duties, and functions of diplomatic and consular officers of the United States.

13. The Defendant MICHELE T. BOND is Assistant Secretary for Consular Affairs at the U.S. Department of State. This suit is brought against Assistant Secretary Bond in her official capacity, as she is charged with oversight of all consular – including immigrant visa – matters.

14. The Defendant ED RAMOTOWSKI is Deputy Assistant Secretary for Visa Services at the U.S. Department of State. This suit is brought against Deputy Assistant Secretary Ramotowski in his official capacity, as he is charged with all matters relating to visas and the administration of visa-related laws.

15. The Defendant UNITED STATES EMBASSY IN ISLAMABAD is a mission within the Defendant Department of State and is involved in the acts challenged in this action. The United States Embassy in Islamabad is responsible for processing Mr. Zaidi's Immigrant Visa petition.

16. The Defendant RICHARD OLSON is the Ambassador of the United States Embassy in Islamabad. This suit is brought against Ambassador Olson in his official capacity, as the Ambassador is responsible for the operation of the U.S Embassy in Islamabad, including the consular section.

17. Defendant JEH JOHNSON is the Secretary of Homeland Security. This suit is brought against Secretary Johnson in his official capacity, as he is charged with the administration and enforcement of all immigration and citizenship laws that fall within the powers, duties and functions of the Department of Homeland Security.

18. Defendant LEON RODRIGUEZ is the Director of the United States Citizenship and Immigration Services. This suit is brought against Director Rodriguez in his official

capacity, as he is charged with the oversight, administration, and execution of immigration laws of the United States.

EXHAUSTION OF REMEDIES

19. There are no administrative remedies for neglect of duty. Plaintiffs have personally made numerous inquiries to the Consulate since Mr. Zaidi's interview on March 21, 2014, to no avail. *See* Ex. 2.

CAUSE OF ACTION

20. On or about April 29, 2013, Ms. Hasan filed a Form I-130 Petition for Alien Relative on behalf of her husband, Mr. Zaidi, pursuant to INA § 201(b). Ex. 3. The I-130 Petition was approved by USCIS on or about August 28, 2013. Ex 1.

21. On January 29, 2014, Ms. Hasan and Mr. Zaidi received notification from the National Visa Center (NVC) that pre-processing was complete and the NVC had forwarded the visa petition to the U.S. Embassy in Islamabad, Pakistan for a visa interview. Ex. 4.

22. Mr. Zaidi was scheduled for an interview at the U.S. Embassy in Islamabad on March 21, 2014. He attended the interview. At the end of the interview, he was given a letter in which he was informed that his visa was denied under Section 221(g) of the INA. Ex. 5. Mr. Zaidi was requested to provide proof of ongoing relationship to the petitioner, Ms. Hasan. Specifically Mr. Zaidi was requested to, "Please provide documentation to show that you have a current, ongoing relationship to your petitioner. We would like to see records from your Skype, Google Hangout, Facetime, Facebook, VIBER, and phone conversations." Ex. 5.

23. On March 30, 2014, Ms. Hasan and Mr. Zaidi submitted additional documentation of their relationship, namely:

a. Phone call records between Ms. Hasan and Mr. Zaidi from February 2013 through March 2014;

b. PayPal statement of international calling cards that Ms. Hasan purchased (March 2013 through March 2014);

c. Viber log (July 2013 through February 2014);

d. Skype log (September 2013 through March 2014);

e. FaceTime log screenshots (January 2014 through March 2014);

f. Pictures of a trip the couple took to Dubai in February 2014;

g. Whatsapp log (March 2013 through March 2014. Ex. 6.

24. On February 12, 2015, Ms. Hasan and Mr. Zaidi submitted further proof of an ongoing relationship, namely:

a. Pictures of their trip to Bali, Indonesia in November/December 2014;

b. Airline tickets to Bali;

c. Hotel and Airbnb accommodations in Bali;

d. PayPal statement of international calling cards (purchased by Ms. Hasan between April 2014 and February 2015);

e. Whatsapp log (April 2014 through February 2015). Ex. 7

25. The Plaintiffs have made numerous inquiries with the Embassy and have been repeatedly told that the documents are currently pending review or under administrative processing. The most recent response, from March 24, 2015, informed the Plaintiffs "this visa case is still under administrative processing." Ex. 8.

26. Mr. Zaidi's Immigrant Visa petition has been pending at the Consulate for over a year since his interview on March 21, 2014. The Consulate's year long delay in issuing a final decision is unreasonable. *See* 22 C.F.R. § 42.81(a).

27. The issuance or denial of visas is the responsibility of consular officers under the INA. *See* INA §§ 101(a)(9), (16), 22 C.F.R. § 42.81(a).

28. Jurisdiction exists where a plaintiff challenges the authority of consular officers to either take or fail to take an action, "as opposed to a decision taken within the consul's discretion." *See Rivas*, 714 F.3d at 1110 (*quoting Patel*, 134 F.3d at 931-32); *Assad v. Holder*, 2013 WL 5935631, at *3 (D.N.J. Nov. 1, 2013) (finding mandamus jurisdiction over pending Immigrant Visa petition subject to "administrative processing" where the "consular officer has a nondiscretionary duty to act and refuses to do so"); *Schutz v. Sec'y, Dep't of State*, 2012 275521, at *1-*3 (finding mandamus jurisdiction over Immigrant Visa petition subject to "administrative processing" where "no consular official has yet decided whether or not to issue the visa"); *Raduga USA*, 440 F. Supp. 2d at 1149 (finding mandamus jurisdiction where "Plaintiffs simply seek to compel the consul to render a final decision on Plaintiff's [] visa applications which is mandated under [22 C.F.R.] § 42.81(a)").

29. The Plaintiffs are not asking the Court to review the Consulate's decision to approve or deny a visa petition. Rather, because the Consulate has failed to render any decision, despite the year that has passed since Mr. Zaidi's visa interview the Plaintiffs seek only to compel the Consulate to make a decision "which the consul is required to make in the first place pursuant to 22 C.F.R. § 42.81(a)." *Raduga USA*, 440 F. Supp. 2d at 1146. *See also Assad*, 2013 WL 5935631, at *3-*4 (denying motion to dismiss and finding

mandatory duty to act on Immigrant Visa petition where Consulate failed to make a decision pursuant to 22 C.F.R. § 42.81(a)); *Schutz*, 2012 WL 275521, at *1-*3 (same).

COUNT ONE
Mandamus Act
(28 U.S.C. § 1361; 28 U.S.C. § 1651)
(As to all Defendants)

30. The allegations set forth in paragraphs 1 through 29 are repeated and incorporated as if fully set forth therein.

31. Issuance of a writ of mandamus requires "(1) a clear right in the plaintiff to the relief sought; (2) a plainly defined and peremptory duty on the part of the defendant to do the act in question; and (3) no other adequate remedy available." *Anderson v. Bowen*, 881 F.2d 1, 5 (2d Cir. 1989). The Plaintiffs clearly meet all three of these criteria. *See Raduga USA*, 440 F. Supp. 2d at 1149 ("Plaintiffs' claim here is clear and certain, and the consul's nondiscretionary, ministerial duty is plainly prescribed. Furthermore, Plaintiffs have no other means to compel the United States consul to make a decision.").

32. The Defendants, who have a clear duty to act upon Mr. Zaidi's Immigrant Visa petition arising from the INA and applicable federal regulations, have unreasonably failed to adjudicate Mr. Zaidi's Immigrant Visa petition for over a year, thereby depriving the Plaintiffs of their right to have a properly filed visa petition adjudicated in a timely manner. *See* INA §§ 101(a)(9), (16); 22 C.F.R. § 42.81(a).

33. The Plaintiffs have fully complied with all statutory and regulatory requirements for seeking an Immigrant Visa for Mr. Zaidi, including obtaining approval of an I-130 Petition for Alien Relative and submitting all necessary documentation and paying all required fees. On or around March 30, 2014, the Plaintiffs provided evidence of proof of an ongoing relationship requested in the letter provided to Mr. Zaidi at the end of his

interview on March 21, 2014. The Plaintiffs submitted further evidence on or around February 12, 2015.

34. Adjudication of Mr. Zaidi's Immigrant Visa petition is a nondiscretionary act that the Defendants are obligated to perform in a timely manner, the Plaintiffs have no alternative means to obtain adjudication of the visa, and they have a clear right to the issuance of the writ. *See Patel*, 134 F.3d at 932 ("[W]e find that the consulate had a duty to act and that to date . . . the consulate has failed to act in accordance with that duty and the writ [of mandamus] should issue."). *See also Assad*, 2013 WL 5935631(denying motion to dismiss over consulate's failure to make decision on petition pending for nineteen months since immigrant visa interview), at *3-*4; *Schutz*, 2012 WL 275521, at *1-*3 (denying motion to dismiss over consulate's failure to make decision on visa petition pending for eight months since immigrant visa interview).

COUNT TWO
Second Claim for relief – Administrative Procedures Act
(5 U.S.C. § 706(1))
(As to all Defendants)

35. The allegations set forth in Paragraphs 1 through 34 are repeated and incorporated as if fully set forth herein.

36. The Defendants' failure to adjudicate the Immigrant Visa petition violate the Administrative Procedures Act, as the alleged agency action is "unlawfully withheld or unreasonably delayed," under 5 U.S.C. § 706(1).

37. This Court has power under 5 U.S.C. § 706(1) to compel an agency to perform "action unlawfully withheld or unreasonably delayed."

38. Defendants are required by 22 C.F.R. § 42.81(a) to provide the Plaintiffs a decision, and they have failed to do so within a reasonable time, instead placing Mr. Zaidi's petition in administrative processing for over year.

39. The Department of State's own website indicates that "[m]ost administrative processing is resolved within 60 days of the visa interview." *See* Department of State, Bureau of Consular Affairs, Administrative Processing Information, *available at* http://travel.state.gov/content/visas/english/general/administrative-processing-information.html (last visited March 16, 2015). Mr. Zaidi's wait of over a year, in comparison, is unreasonable.

COUNT THREE
(Equal Access to Justice Act)
(28 U.S.C. § 2412)

40. The allegations set forth in Paragraphs 1 through 38 are repeated and incorporated as if fully set forth herein.

41. If Plaintiffs prevail, they will seek costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request the Court to grant the following relief:

A. Issue a writ of mandamus compelling the Defendants and those acting under them to perform their duty to adjudicate Mr. Zaidi's Immigrant Visa petition without further delay;

B. Grant reasonable attorney's fees and costs of court under the Equal Access to Justice Act ("EAJA"); and

C. Grant such other and further relief as this Court deems proper.

Date: April 1, 2015

Respectfully submitted,

_____/s/____________________

Ramzi Kassem
Nermeen Saba Arastu
Naz Ahmad
CLEAR project
Main Street Legal Services, Inc.
City University of New York School of Law
2 Court Square
Long Island City, NY 11101
(t) (718) 340-4558
(f) (718) 340-4478
(e) ramzi.kassem@law.cuny.edu